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No. 111 Original

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1987

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STATE OF DELAWARE,

Plaintiff,

v.

STATE OF NEW YORK,

Defendant.

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## PLAINTIFF'S BRIEF IN OPPOSITION TO MOTION OF THE STATE OF TEXAS TO INTERVENE

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## STATEMENT OF THE CASE

With the permission of this Court of May 31, 1988, the State of Delaware has commenced an original action against defendant, The State of New York, due to New York's escheating of intangible property from Delaware-incorporated securities brokers which property has been abandoned by persons or entities for whom the brokers' records show no names or last known addresses ("Unknowns").

The State of Texas now seeks leave to file a complaint in intervention. To the extent Texas seeks intervention, as of right, to assert a claim to some of the abandoned intangible property of Unknowns being escheated by New York from Delaware-incorporated brokers, Delaware takes no position.

Delaware does oppose Texas' intervention to the extent that it seeks to assert claims to abandoned intangible property which is not the subject of this action ("Additional Claims").

Specifically, Delaware opposes intervention by Texas to assert paragraphs 43 through 56 of its proposed Complaint in Intervention[1] which would add to the subject matter of this action abandoned intangible property of Unknowns being escheated by New York either (1) from a New York corporation, The Depository Trust Company ("DTC"), a securities clearing house; or (2) from broker members of DTC (other than Delaware-incorporated brokers) where the escheated property is a Texas governmental security or a distribution thereon ("Additional Excess Receipts").[2]

## ARGUMENT

### Discretionary Intervention under Rule 24(b) should not be granted to add collateral subject matter to this action absent a showing of need by the movant.

Texas seeks intervention to assert its Additional Claims to Additional Excess Receipts under Rule 24(b) of the Federal Rules of Civil Procedure.[3] This makes its intervention entirely in the Court's discretion. 7C C. Wright, A. Miller and M. Kane, *Federal Practice and Procedure* §1913 at 376-77 (1986). Exercise of that discretion is not warranted here, where Texas has made no showing why this action needs to be burdened by such Additional Claims to property not now before the Court.

When this Court took up the conflicting claims of the various states to the escheat of intangible personal property, it undertook (for obvious salutary reasons) to fix rules to govern the escheat of all such intangible obligations. *Texas v. New Jersey*, 379 U.S. 674, 678 (1965).

One of the rules there adopted was that the state of incorporation of a corporate holder of abandoned intangible property may escheat such property if the corporate holder

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1. Motion of the State of Texas for Leave to File Complaint in Intervention; and Brief of the State of Texas in Support of Motion for Leave to File Complaint in Intervention ("Texas Motion and Brief") pp. 32-36.

2. Texas Motion and Brief, pp. 33, 35.

3. Texas Motion and Brief, p. 59.

had no record of a last known address for the beneficial owner of the intangible property. 379 U.S. at 682. This rule was reaffirmed in *Pennsylvania v. New York*, 407 U.S. 206 (1972).

Delaware's action in this Court seeks to enforce that rule against New York which has been escheating from Delaware-incorporated brokerage houses substantial property of Unknowns.[4] New York defends Delaware's action on the ground that it is not escheating property of Unknowns but rather somehow in fact is escheating property which is that of New York domiciled owners.[5]

Texas seeks intervention to urge that this Court modify the rule of *Texas v. New Jersey, supra*, in which it was a participant, and reaffirmed in *Pennsylvania v. New York, supra*. Texas now seeks to argue that abandoned intangible property of Unknowns should be escheated to the state of incorporation of the issuer of a security constituting or giving rise to the abandoned property.[6]

Delaware takes no position as to Texas' intervention to make its new argument as to the property which is the subject matter of Delaware's action. Texas concedes that the outcome of Delaware's action will control the outcome of the Additional Claims for Additional Excess Receipts.[7] Thus, should this Court allow Texas to intervene to assert its theory of escheat as to the subject matter of the Delaware action, Texas could make its new argument and seek to protect whatever hoped for claim it has to any abandoned intangible property held for Unknowns and issued by Texas issuers.

However, as to intervention by Texas to assert the Additional Claims to Additional Excess Receipts, Texas admits that a determination of such claims will turn on "arguments which are relevant and peculiar to the Additional Excess Receipts."[8] Yet this Court will look in vain at Texas' moving papers for any

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4. Texas Motion and Brief, pp. 20-21.
5. Texas Motion and Brief, p. 21.
6. Texas Motion and Brief, pp. 36, 37, 62-63.
7. Texas Motion and Brief, p. 35-36.
8. Texas Motion and Brief, p. 36.

explanation showing why Texas' interest will be prejudiced unless Delaware's action is burdened with matters "peculiar to" property not the subject of Delaware's claims.

This Court has previously declined a sought after permissive intervention where it would without need add a collateral issue to the litigation before the Court. *Sutphen Estates, Inc. v. United States*, 342 U.S. 19, 23 (1951). Delaware urges the Court likewise to reject Texas' intervention to assert the Additional Claims to the Additional Excess Property. *See Commonwealth Edison Co. v. Allis-Chalmers Mfg. Co.*, 315 F.2d 564 (7th Cir. 1963) (affirming denial of intervention where damages issues differed from pending action); *National American Corp. v. Federal Republic of Nigeria*, 425 F. Supp. 1365, 1372-73 (S.D.N.Y. 1977) (denial based in part on "the necessity of additional proof"); *City of Rockford v. Secretary of Housing and Urban Develop.*, 69 F.R.D. 363, 366 (N.D. Ill. 1975).

## CONCLUSION

For the foregoing reasons, Delaware respectfully requests this Court to deny the Motion of the State of Texas to Intervene to assert herein Additional Claims to Additional Excess Receipts.

Respectfully submitted,

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February 13, 1989

**PROOF OF SERVICE**

I, RICHARD L. SUTTON, certify that I am counsel of record for plaintiff, the State of Delaware, that I am a member of the Bar of the Supreme Court of the United States, and that on the 13th day of February, 1989, I served copies of the foregoing Plaintiff's Brief In Opposition To Motion Of The State Of Texas To Intervene, on all parties required to be served by depositing such copies, first-class postage prepaid, in a United States Post Office, addressed as follows:

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